**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION No.2195 of 2000

**.8.2007**

Between:

Vuppuluri Veera Venkata Raju, S/o.Venkata Rama Rao
And others

…Petitioners

AND

Special Deputy Tahsildar, Tribal Welfare,
Gangavaram, East Godavari District
And others.

…Respondents

**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION No.2195 of 2000

ORDER:

Petitioners filed the instant writ petition seeking a writ of Certiorari to call for the records connected with the orders of the Government – fourth respondent herein; in G.O.Ms.No.102, dated 16.10.1999, as illegal, arbitrary and without jurisdiction, and consequently declare said proceedings as illegal and without authority. Be it noted by impugned order, the Government in exercise of their revisional powers under Section 6 of Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, as amended by Regulation I of 1970 (the Regulation, for brevity), confirmed the order passed by the third respondent, namely, the District Collector and Agent to the Government, East Godavari District.

Petitioners are owners of land admeasuring Acs.50.00 in survey Nos.108/4 and 108/6 situated at Pidathamamidi village of Gangavaram Mandal in East Godavari District. They allege that their predecessors also purchased land admeasuring Acs.30.88 in survey No.102/1 and 102/3 of the same village, under two sale deeds dated 24.4.1968, executed in their favour by M/s.Nallamilli Suryanarayana Reddy, Nammamilli Seshayamma and Anasuyamma. Petitioner and their vendors are non-tribals. They allege that the vendors named hereinabove purchased the property from Smt.Ganga Bai and Smt.Kamala Bai under three registered sale deeds dated 06.8.1962, 06.8.1962 and 22.10.1962 respectively. These two persons appear to have purchased the land on 08.11.1952 from Varra Ayyappa Naidu under registered sale deeds and all of them were non-tribals. From 1968 onwards, petitioners are cultivating the land.

First respondent herein filed a complaint before the second respondent under Section 3(2) of the Regulation for restoration of the land to the Government alleging that the petitioners were in occupation of the land in contravention of Section 3(1)(a) of the Regulation. Petitioners opposed the same being LTRP No.655/79. They contended that the transfer of immovable property by non-tribals to non-tribals is prohibited by the Regulation only after Regulation I of 1970 came into force and as the transactions prior to that are not illegal. They also contended that even in Village Settlement Register in 1937, the names of non-tribals Narrala Veeranna and Varra Ayyappa Naidu were shown as occupants. On behalf of the petitioners, first petitioner herein gave deposition and Exs.R.1 to R.8, which are Xerox copies of the sale deeds referred to herein above, and Xerox copies of settlement fair adangal. After considering these documents, second respondent came to conclusion that the land was classified in the survey and settlement records as 'Gayalu' (Government poramboke land), that the name of Varra Ayyappa Naidu was subsequently interpolated and therefore the sale by Varra Ayyappa Naidu and subsequent sales are not valid as they are null and void under Section 3(1)(a) of the Regulation. For these reasons, second respondent ordered ejectment of the petitioners or their predecessors from the land in survey Nos.102/1 and 102/3. Insofar as the land in survey Nos.108/4 and 108/6 is concerned, second respondent having appreciated Ex.R.7 concluded that they are patta lands and therefore transfer of these lands by non-tribals in favour of non-tribals prior coming into force of Regulation I of 1970 is lawful. Aggrieved by the said order insofar as it went against them petitioners preferred CMA No.23 of 1995 before the third respondent, who dismissed the same on09.8.1996. As noticed supra, petitioners' revision also dismissed by the Government.

A counter affidavit is filed by the Agent to the Government. While tracing the progress of the case filed by the first respondent before the second respondent till passing of the impugned order, it is alleged that the petitioners failed to produce patta of Varra Ayyappa Naidu as alleged and that as per survey and settlement register the land is registered as 'Gayalu'. It is further alleged that pursuant to the orders of the second respondent dated 13.6.1995, and the orders of the Agent dated 09.8.1996, the possession was already taken by the first respondent on 23.9.1996 and entrusted to Village Administrative Officer for supervision.

Learned Counsel for the petitioners submits that the copy of extract of settlement register/fair adangal produced before the original authority clearly contained the entries showing that the land in survey

Nos.102/1 and 102/3 is patta land of Narala Veeranna and Varra Ayyappa Naidu, that the same was marked as Ex.R.7 and that without taking into consideration Ex.R.7, original authority and appellate authority recorded a finding that it is 'Gayalu'. Alternatively learned Counsel would submit that if the land is treated as 'Gayalu'/Government poramboke land, the persons in possession of such land by reason of long possession or by virtue of registered sale deeds, cannot be evicted by the respondents under the provisions of the Regulation. He placed reliance on the decision of this Court in **U.Subhash Chandra Bose v Agent to Government and District Collector, Visakhapatnam**[1] wherein it was laid down that when the land is claimed to be poramboke land belonging to Government the provisions of the Regulation cannot be invoked.

Learned Government Pleader for Social Welfare submits that the original authority has considered Ex.R.7 and recorded a finding of fact that the land in survey No.102/1 and 102/3 is 'Gayalu' and that being a disputed question of fact, the Court should not disturb the said finding of fact. Secondly he submits that even if the land is Gayalu/Government poramboke land, the provisions of the regulation would apply. Such a dealing of the land would come within the definition of "Transfer" under Section 2(g) of the Regulation. According to the learned Government Pleader even a person who is in encroachment of the Government land in agency area can be evicted under Section 3(2)(a) of the Regulation. He placed reliance on the decision of this Court in **Suresh Bhargava v State of A.P.**[2] and a decision of the Supreme Court in **Amrendra Pratap Singh v Tej Bahadur Prajapati**[3].

The power of the High Court under Article 226 of Constitution of India while exercising Certiorari jurisdiction is very limited. A jurisdictional error and/or a grave error apparent on the face of record in exercising jurisdiction with reference to the statute conferring such power, broadly speaking, is a ground for Certiorari. All errors in recording finding of facts or applying law to such facts do not permit the issue of writ of Certiorari. It is also well settled that when the statute creates an authority or tribunal and entrusts power to evaluate the facts and record findings thereon, ordinarily the finding on facts must be treated as final. Merely because other view is possible on revaluation of the same facts, the High Court cannot record a different finding. A reference may be made to the decision of the Supreme Court in **Syed Yakoob v Radha Krishnan**[4], wherein it was held as follows.

> What can be corrected by a writ has to be an error of law; hut it must be such an error of law as can be regarded as

one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.

The submission of learned Counsel for petitioners that Ex.R.7 was not taken into consideration is wholly misconceived. The original authority considered Ex.R.7, which is Xerox copy of settlement register/ fair adangal, and observed as under.

> Photostat copy of extract of Settlement fair Adangal of Pidathamamidi (V): The extract covered by S.No.108/1, Ac.52.22 name of the Pattadar Nayala Veeranna, S.No.108/5, Ac.0.98 name of the Pattadar Narala Veeranna, S.No.102/1 Ac.18.50 cts. name of the Pattadar Varra Ayyappanaidu (in remarks column noted as authority not mentioned) S.No.102/3, Ac.12.32 cts. name of the Pattadar Varra Ayyappanaidu. In the remarks column mentioned as “Gayalu”.

Yet again, the original authority recorded a finding as under.

> The details of sales are noted below. The S.No.108/1A Ac.40.79 and 108/5 Ac.0.95 have been mentioned as Patta land with the name of Marala Veeranna, Settibalija by caste, and S.No.102/1, Ac.18.56; 102/3 Ac.12.32 mentioned as

> Gayalu lands at the time of Survey and Settlement. But subsequently the name of Varra Ayyappanaidu was seems to be added. The authority for adding his name was not mentioned. Now and when it was added is not known. If they were granted settlement patta, that Varra Ayyappanaidu has to produce them before the court. The Respondents or their predecessors have not filed the Settlement Pattas to prove that they are settlement pattadars.

Therefore, the finding cannot be interfered with. The original authority as well as appellate authority considered this aspect of the matter and recorded a finding that it is Gayalu, which is unassailable.

Whether the provisions of the Regulation apply even in respect of poramboke land, which is in possession of a non-tribal? Section 2(g) of the Regulation defines "Transfer" means mortgage with or without possession, lease, sale, gift, exchange or any other dealing with immovable property not being a testamentary disposition. As per the definition "Transfer" includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, sale, gift, exchange or other dealing. Therefore the term "Transfer" is given a wide meaning unlike in the term "Transfer of property" as defined in Section 5 of Transfer of Property Act, 1882. Conveyance of property in present or in future by a living person to another living person is 'transfer of property' as per Transfer of Property Act. But as per Section 2(g) of the Regulation, (i) lease, (ii) sale, (iii) gift, (iv) exchange, (v) mortgage, (vi) charge on property, and (vii) "any other dealing with the immovable property" are treated as "Transfer" for the purpose of the Regulation. To say in other words, even if a person is found to be in possession of immovable property not by reason of lease, sale, gift, exchange or mortgage, still such person is said to be dealing with the immovable property and therefore it falls within the definition of "Transfer". A person dealing with the immovable property being in possession or encroachment or trespass is deemed to have been in possession in contravention of the provisions of the Act as per Section 3(1)(a) of the Regulation.

In **Suresh Bhargava** (supra), this Court considered the question whether the acts of forcible dispossession and encroachment would amount to "Transfer" within the meaning of Section 2(g) of the Regulation. In the said case, third respondent herein instituted case against one Maganti Satyanarayana for restoration of possession. The original authority ordered ejectment of a non-tribal and directed restoration of possession to the tribal on the ground that there was "dealing with the immovable property" of the third respondent. The appellate authority while confirming the same held that there was an oral lease by third respondent in favour of Maganti Satyanarayana.

Before this Court it was urged that in the absence of plea of oral lease, the order was vitiated. This Court rejected the contention and observed as under.

> Be that as it may, nothing prevented the appellate authority form eliciting the truth of the transaction even though it was not specifically pleaded by the third respondent. **In any event the expression 'dealing with immovable property' occurring in Section 2(g) of the Regulation embraces within its fold, acts of forcible dispossession end encroachment**.
>
> (emphasis supplied)

I n **Amrendra Pratap Singh** (supra), the Supreme Court considered the scope of the definition "Transfer" in Section 2(f) of Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956. Be it noted that the said definition is almost similar to the definition "Transfer" in Section 2(g) of Andhra Pradesh Regulation I of 1959. After considering the term "Transfer" in various Acts with reference to the decided cases, the Apex Court laid down as under.

> The law laid down by this Court is an authority for the proposition that the court shall step in and annul any such transaction as would have the effect of violating a provision of law, more so when it is a beneficial piece of social legislation. A simple declaratory decree passed by a civil court which had the effect of extinguishing the title of a member of a Scheduled Tribe and vesting the same in a non-member, was construed as "transfer" within the meaning of Section 165(6) of the M.P. Land Revenue Code, 1959. **Thus, we are very clear in our minds that the expression "transfer of immovable property" as defined in clause (*f*) of para 2 of the 1956 Regulations has to be assigned a very wide meaning. Any transaction or dealing with immovable property which would have the effect of extinguishing title, possession or right to possess such property in a tribal and vesting the same in a non-tribal, would be included within the meaning of "transfer of immovable property".**
>
> (emphasis supplied)

Therefore, even if the land is classified as Gayalu/Government poramboke land, the person who is in possession of such land must be said to be dealing with such immovable property and therefore the same falls within the scope of "Transfer" as defined under Section 2(g) of the Regulation and therefore the Regulation I of 1959, as amended by Regulation I of 1970, applies. All the authorities have considered this aspect of the matter and arrived at the finding correctly. The finding does not warrant any interference.

The writ petition, for the above reasons, is dismissed. No costs.

_____ _

August , 2007 (**V.V.S.RAO, J**)

YS

---

[1] 1992(1) ALT 52 (NRC)

[2] 1989(2) ALT 516

[3] (2004) 10 SCC 65

[4] AIR 1964 SC 477

.. – 5. Transfer of property, defined:- In the following Sections “Transfer of Property” means an act by which a living person conveys property in present or in future, to one or more other living persons, or to himself and one or more other living persons, and ‘to transfer property’ is to perform such act.